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Attorneys for SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015,

Charging Party,

and

MONTECITO HEIGHTS HEALTHCARE &
WELLNESS CENTER,

Respondent.

No. 31-CA-129747

**CROSS-EXCEPTIONS TO THE
DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

No.	Page	Cross-Exception
1.	1	To the failure of the Administrative Law Judge to correct the caption to reflect the correct name of the Charging Party.
2.	3:8-11	To the failure of the Administrative Law Judge (“ALJ”) to recognize that at least two circuits, have agreed with the Board’s view of the unlawfulness of these provisions.

No.	Page	Cross-Exception
3.	Passim ¹	To the failure of the ALJ to consider the argument that the Federal Arbitration Act (“FAA”) does not apply to this unlawful Forced Unilateral Authorization Procedure (“FUAP”) because it does not affect interstate commerce.
4.	Passim	To the refusal of the ALJ to label the disputed policy as a Forced Unilateral Arbitration Policy (FUAP) instead of an ADR Policy. This wrongfully characterizes the unlawful policy. The Respondent wrongdoer doesn’t get the choice of nomenclature.
5.	Passim	To the failure of the ALJ to find that the FUAP is not an agreement or contract; it is a unilaterally enforced policy.
6.	Passim	To the failure of the ALJ to recognize that the American Arbitration Association charges for proving a list of Arbitrators. The policy does not state that the employer will [pay the cost of the AAA
7.	Passim	To the failure of the ALJ to recognize the FUAP prohibits an employee for being a “representative of others.” This would prohibit one employee from representing another employee in the arbitration process.
8.	Passim	To the failure of the ALJ to consider that the FAA cannot override the purposes of other federal statutes.
9.	Passim	To the failure of the ALJ to consider that the FUAP would prohibit collective actions that are not preempted by the FAA under state law.
10.	Passim	To the failure of the ALJ to recognize that the FUAP unlawfully prohibits group claims that are not a class action or representative actions or as a private attorney general or as a representative of others.
11.	Passim	To the failure of the ALJ to recognize that the FUAP is invalid and it appears that Section 7 rights to resolve disputes by concerted activity such as striking, boycotting, intermittent strikes, bannering, leafletting, expressive activities, sit ins, lawful sabotage, etc.
12.	Passim	To the failure of the ALJ to recognize that the FUAP unlawfully prohibits consolidation.
13.	Passim	To the failure of the ALJ to recognize that the FUAP unlawfully prohibits one employee from representing other employees.

¹ We use the reference to “passim” because the ALJ didn’t mention many of these issues. So the Cross-Exception is to the entire Decision meaning everywhere in the Decision.

No.	Page	Cross-Exception
14.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful because it would prohibit salting and applies after employment ends. It specifically includes defamation claims after employment ends.
15.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful and interferes with section 7 rights because it forecloses group claims brought by a union as a representative of employees.
16.	Passim	To the failure of the ALJ to recognize that FUAP is unlawful because it imposes additional cost of employees to bring employment related disputes.
17.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful because it would prohibit an employee of another employer from assisting a Montecito employee or joining of the Montecito employee to bring a claim.
18.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful and interferes with Section 7 rights because it applies to parties who are not the employer or may be the agents of the employer or the employer of other employees under the Act.
19.	Passim	To the failure of the ALJ to recognize that the FUAP violates ERISA.
20.	Passim	To the decision by the ALJ to approve the stipulated record and to refuse to allow the Charging Party to put on record evidence See ALJ Order of June 2, 2016 to which Charging Party takes complete exception. To the failure to include the Charging Party's Objection in the record.
21.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful and interferes with Section 7 rights because it restricts the right of workers to act together to defend claims by the employer against them.
22.	Passim	To the failure of the ALJ to recognize that the FUAP is unlawful under the Norris-LaGuardia Act.
23.	Passim	To the failure of the ALJ to recognize that because the policy is unclear, it is invalid and overbroad.
24.	Passim	To the refusal of the ALJ to allow the Charging Party to put on evidence as requested in its Response to the Order to Show Cause.

No.	Page	Cross-Exception
25.	Passim	To the failure of the ALJ to recommend that the Board's decision in <u>Lutheran Heritage Village –Livonia</u> should be overruled.
26.	4:16-22	To the failure of the ALJ to apply the Religious Freedom Restoration Act.
27.	4:25-27	To the conclusions of law.
28.	4:30-34	To the remedy in that it is totally inadequate. To the failure of the remedy to include attorney's fees, longer posting, the tolling of any statute of limitations, to a reading of the notice, to the posting of the NLRB's employee rights poster, to mailing and proving the Board's Decisions to employees, attaching the Decision to payroll statements.
29.	4:40-5:38	To the order which is inadequate.
30.		To the Appendix Notice because it is misleading and fails to contain language in which the employer admits that it violated the law.

Dated: January 19, 2017

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld

DAVID A. ROSENFELD
Attorneys for SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 2015

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1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed
3 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
4 at whose direction the service was made. I am over the age of eighteen years and not a party to
5 the within action.

6 On January 19, 2017, I served the following documents in the manner described below:

7 **CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

- 8 ☒ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy
9 through Weinberg, Roger & Rosenfeld's electronic mail system from
kkempler@unioncounsel.net to the email addresses set forth below.

10 On the following part(ies) in this action:

11 Executive Secretary
12 National Labor Relations Board
1015 Half Street SE
13 Washington, DC 20570-0001

14 *VIA E-FILING*

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23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct. Executed on January 19, 2017, at Alameda, California.

25 */s/ Karen Kempler*
26

Karen Kempler